

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

MICHAEL LYNN CASH,

Plaintiff,

v.

Case No. 22-CV-9-JFH-JAR

CITY OF DURANT et al.,

Defendant.

ORDER

Before the Court is the Report and Recommendation of United States Magistrate Judge Jason A. Robertson. Dkt. No. 33. The Magistrate Judge recommends that the Motion to Dismiss filed by Defendants City of Durant and Chris Cicio [Dkt. No. 32] be GRANTED.

Neither party objected to the Magistrate Judge's Report and Recommendation within the fourteen-day period prescribed by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b). Having reviewed the Report and Recommendation, the Court concurs with the Magistrate Judge's recommendation and accepts and adopts it as the order of this Court.¹

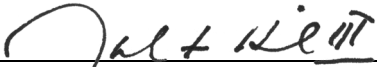
IT IS THEREFORE ORDERED that:

1. The Motion to Dismiss filed by Defendants City of Durant and Chris Cicio [Dkt. No. 32] is GRANTED.

¹ On April 28, 2023, counsel for Defendants City of Durant and Chris Cicio notified the Court that their attempt to serve a copy of their Motion to Dismiss on Plaintiff failed because it was mailed to an incorrect address. Dkt. No. 36. Contemporaneously with their notice, Defendants filed an amended certificate service, certifying that a copy of the Motion to Dismiss was mailed to Plaintiff at the correct address. Dkt. No. 37. The apparent failure to serve has no bearing on the Court's acceptance of the Magistrate Judge's Report and Recommendation, as a copy of the Report and Recommendation was properly served on Plaintiff and Plaintiff had an opportunity to object, pursuant to 28 U.S.C. § 636(b).

2. Plaintiff's claims are DISMISSED with prejudice. Plaintiff is warned that this dismissal may count as a "prior occurrence" or "strike" pursuant to 28 U.S.C. 1915(g).

Dated this 2nd day of May 2023.



JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE